

MEMORANDUM OF UNDERSTANDING
Between
ENVIRONMENTAL PROTECTION AGENCY REGION 8
And
DEPARTMENT OF INTERIOR BUREAU OF LAND MANAGEMENT
Concerning
THE UPPER ANIMAS MINING DISTRICT MIXED OWNERSHIP SITE

I. BACKGROUND

A. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for the U.S. Environmental Protection Agency (EPA), Region 8 and the United States Department of the Interior (DOI or Interior) Bureau of Land Management (BLM) to coordinate response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq. at the Upper Animas Mining District Site in San Juan County, Colorado (Site).

B. This MOU is intended to implement, and to be consistent with the 2007 "Statement of Principles for Collaborative Decision Making at Mixed Ownership Sites" executed by the EPA, the United States Department of Agriculture (USDA), and the DOI. In that Statement of Principles, the parties recognized that, to expeditiously and efficiently implement the necessary response actions at mixed ownership sites, they should coordinate their respective authorities under CERCLA. The parties agree to make every effort to harmonize this MOU with the Statement of Principles, however, in the case of a conflict this MOU controls. This MOU also provides a process for resolving disputes between the EPA and BLM that may arise during such response actions. This MOU is not intended to address coordination regarding natural resource damage issues.

C. Pursuant to CERCLA, the President has authority to respond to releases of pollutants or contaminants and hazardous substances when response is necessary to protect the public health or welfare or the environment.

D. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. § 9604), abatement actions (42 U.S.C. § 9606), cost recovery (42 U.S.C. § 9607), and entering into agreements with potentially responsible parties (PRPs) to perform work (42 U.S.C. § 9622), to the heads of several executive departments and agencies, including the EPA and the DOI.

E. The Secretary of the Interior has re-delegated certain of these authorities to the Director of BLM with respect to land and facilities under BLM jurisdiction, custody or control (hereinafter referred to as BLM lands). The Director of BLM has re-delegated most of these authorities to BLM State Directors. The Secretary of Interior has re-delegated CERCLA settlement authority to the Solicitor.

F. The BLM administers BLM lands on behalf of the public. The BLM is, with certain limitations, delegated the President's CERCLA authority where a release of a pollutant or contaminant or a hazardous substance is on or the sole source of the release is from a facility under the jurisdiction, custody or control of BLM. See Executive Order 12580, §§ 2(e)(1), and 4(b)(1). Executive Order 13016 amended Executive Order 12580 to authorize the Secretary of the Interior to use CERCLA Section 106, 42 U.S.C. § 9606, to address releases or threats of releases affecting lands and natural resources under the BLM's jurisdiction, custody or control subject to the concurrence of the EPA's Administrator. See Executive Order 13016, § 2.

Subject to the delegations of authority to DOI and other agencies in Executive Order 12580, as amended, the President's CERCLA authority generally is delegated to the EPA. Concerning lands under the jurisdiction, custody, or control of DOI, the EPA is delegated authority under CERCLA to address emergency removals on those lands and to select remedial action on those lands only at sites which are on the National Priorities List (NPL). The EPA has assessed the Site for potential listing on the NPL and is coordinating its technical investigations and field sampling work with the efforts of the Animas River Stakeholders Group (ARSG). The ARSG is a community stakeholder group, locally organized and managed that is working to improve water quality and habitats in the Animas River through a collaborative process designed to encourage participation from all interested parties.

The Site is a mixed-ownership site located in San Juan County, Colorado, at which releases and threatened releases of hazardous substances, pollutants, or contaminants are located partially on, or the source of the release is partially from, both private lands and BLM lands. The BLM lands portion of the Site is administered by the BLM Southwest District, Tres Rios Field Office. The Site, for purposes of this MOU, generally corresponds to the Upper Animas Mining District Site identified in the CERCLA Information System (CERCLIS), USEPA ID# CO0001411347.

G. The Upper Animas Mining District was listed on CERCLIS in 1996. Since that time the EPA and BLM have conducted several response actions at the Site, consistent with CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, and Executive Order 12580.

H. The parties have determined that additional response actions may be needed to further investigate the release or threatened release or to address the threat to human health and/or the environment at the Site. The EPA and BLM plan to address these releases/threats of releases of hazardous substances into the environment through the coordinated exercise of their respective CERCLA authorities.

I. All response actions covered by this MOU shall be not inconsistent with the NCP, including assurances of state consultation by the EPA if the Site is listed on the NPL.

II. COORDINATION AND COOPERATION

A. The EPA and the BLM have designated the following persons to be involved in the day-to-day coordination, communications and decisions regarding the exercise of the agencies'

respective authorities at the Site. Each agency will notify and consult with the other as soon as practical regarding plans to change persons or positions.

The BLM Remedial Project Managers or On-Scene Coordinators (referred to as the Project Coordinators for purposes of this MOU) (BLM PC)

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The EPA Project Coordinators (EPA PC)

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Consistent with the NCP, 40 C.F.R. part 300, the EPA will be the lead agency for response actions involving a parcel, project or operable unit located on the private portion of the Site, and BLM will be the lead for response actions involving a parcel, project or operable unit located on BLM lands. Nevertheless, the parties also acknowledge that it may be appropriate, in some cases, to designate jointly a single agency to take principal responsibility for some or all activities Site-wide.

B. When undertaking clean up actions pursuant to this MOU, the parties intend to discuss and reach agreement on an allocation of costs associated with the response actions. Subject to Sections IV. B and C of the MOU, each party intends to seek funding as determined by future agreements on allocation of costs for their agreed upon share, if any. Neither party waives, and each specifically reserves any and all rights, causes of action or defenses.

C. The EPA PC and the BLM PC resolve to coordinate with each other to implement response actions at the Site. This coordination should include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings related to activities at the Site, and an opportunity to participate in any scheduled meetings with contractor(s), the State of Colorado, other Federal, State and Tribal Natural Resource Trustees, and ARSG or any significant on-Site activities. In the event that a meeting needs to be scheduled on shorter notice, the BLM PC or the EPA PC resolve to contact his/her counterpart and shall determine the counterpart's availability prior to scheduling the meeting.

D. The EPA and the BLM intend to establish a schedule of activities for the Site to be used for planning purposes. The EPA and the BLM intend that the schedule of activities will use as

its base the ongoing collaborative process hosted by the ARSG .The schedule shall be updated periodically by the PCs to reflect actual progress on work at the Site and current projections.

E. The EPA and BLM intend to provide to each other copies of non-privileged documents related to Site work upon request. Such documents shall include, but not be limited to, project proposals, sampling and analysis plans and work plans. The EPA PC and BLM PC also intend to provide each other with copies of documents needed to fulfill the purposes of this MOU. The EPA PC and BLM PC resolve to cooperatively determine which documents related to the Site are to be copied and provided to the other agency, either directly by the agencies or by third parties.

F. Where the EPA plans and conducts response actions on the private portion of the Site and BLM plans and conducts response actions on the public portion of the Site, the EPA and BLM intend to coordinate on major decision points and documents, as set forth below. Where, pursuant to section II.A. the parties mutually agree that one agency shall be principally responsible for some or all activities Site-wide, the parties intend to reach concurrence on the major decision points and documents, as set forth below:

- (1) The scope of work to be performed and estimated costs;
- (2) Project management procedures and contracts;
- (3) Project design and construction specifications;
- (4) Enforcement activities against potentially responsible parties;
- (5) Engineering evaluations/cost analyses and remedial investigation/feasibility studies;
- (6) Establishment of new water quality goals or TMDs, if necessary.
- (7) Draft and final risk assessments;
- (8) Action memoranda, proposed plans, and records of decision and any amendments or ESDs, including the establishment, where appropriate, of a repository to manage remediation wastes;
- (9) Community relations activities, including response to public comments;
- (10) Certifications of completion issued for response actions at the Site;
- (11) Long term operations and maintenance/post removal site control; and
- (12) Future response actions in the event of a remedy failure.

G. For purposes of coordination and concurrence on major decision points and documents as set forth above, the parties resolve to provide comments within 30 calendar days of their receipt

of the deliverables relating to those decision points and documents. If additional time is needed, the parties will discuss the need for a reasonable amount of additional time. If the project coordinators cannot agree on a review period, the issue will be subject to dispute resolution.

H. The BLM PC should advise the EPA PC regarding any issues and concerns of special interest to the BLM. Similarly, the EPA PC should advise BLM PC of any issues and concerns of special interest to the EPA. PCs from both agencies intend to assist each other to seek out and communicate with community members knowledgeable about the Site. PCs intend to also coordinate with each other regarding any community relations or community outreach activities that either the EPA or BLM proposes to undertake regarding the site.

I. BLM consents to the EPA and their authorized representatives entering and having access to BLM land within the Site for the purposes of conducting response actions. To the extent practicable, the EPA shall provide advance notice to BLM of at least seven days (7) prior to entering BLM lands.

J. Legal counsel for the EPA and DOI intend to coordinate on legal issues including investigation of, contact with and enforcement actions against any PRPs for the Site.

III. DISPUTE RESOLUTION

A. Consultation between the EPA PC and BLM PC should resolve the vast majority, if not all, technical issues between the EPA and BLM.

B. If the EPA PC and BLM PC do not reach agreement on a disputed item arising from activities at the Site, the issue should be elevated to the appropriate senior management at BLM and the EPA for further discussion and resolution.

C. In reaching a final decision, when the EPA and BLM do not agree, BLM will have the responsibility, consistent with the NCP, for making decisions on federal lands and the EPA will have the responsibility for decisions on private property. All decisions must be consistent with CERCLA and the NCP. If either the EPA or BLM determines that a final decision has been made that is inconsistent with CERCLA or the NCP, that agency has the option of withdrawing from this MOU.

IV. LIMITATIONS AND DURATION OF AGREEMENT

A. The BLM and the EPA reserve their rights and authorities under CERCLA, as well as other laws, the NCP, and applicable Executive Orders. No provision of this MOU in any way limits those rights and authorities.

B. Nothing in this MOU shall be considered as obligating the EPA or the BLM to expend funds, or as involving the United States, in any contract or other obligation for the future payment of money. The parties recognize that each must operate within the requirements of the federal budget process and legal restrictions concerning obligations of funds. No provision of this

MOU shall be construed to require the parties to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

C. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.

D. This MOU is not intended to, and does not, create any right, benefit or trust obligation, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

E. Nothing in this MOU shall restrict the BLM or the EPA from participating in similar activities with other public or private agencies, organizations, and individuals.

F. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.

G. After giving sixty (60) days written notice, either party may terminate or withdraw from this MOU. This MOU may be amended at any time by agreement of the parties in writing.

H. This MOU is effective upon the date signed by the last of the parties and may be amended by written concurrence of both parties.

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ENVIRONMENTAL PROTECTION AGENCY, REGION 8

By: Martin Hestmark Date: 12/18/12
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Assistant Regional Administrator
Office of Ecosystem Protection and Remediation
U.S. Environmental Protection Agency
Region 8

DEPARTMENT OF INTERIOR BUREAU OF LAND MANAGEMENT

By: Helen M. Hankins Date: 2-12-2013
Helen M. Hankins
State Director
BLM Colorado

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